

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

SHAWN McDANIEL,

Defendant.

:

Case No. 1:06-CR-084
Also Case No. 1:13-cv-287

:

Chief Judge Susan J. Dlott
Magistrate Judge Michael R. Merz

:

REPORT AND RECOMMENDATIONS

Defendant has filed a Motion to Vacate, Set Aside, or Correct a Sentence, pursuant to 28 U.S.C. §2255. Upon the Court's Order for an Answer, the United States has responded by agreeing that Defendant is entitled to be re-sentenced under the Fair Sentencing Act (Doc. No. 118).

Accordingly, it is respectfully recommended that the Motion to Vacate be granted, that Defendant's sentence be vacated, and that Defendant be resentenced under the Fair Sentencing Act.

June 11, 2013.

s/ *Michael R. Merz*
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen days because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(C), (D), (E), or (F). Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).